

STATEMENT OF EMERGENCY

907 KAR 20:035E

(1) This is an emergency administrative regulation which establishes that the requirements established in this administrative regulation do not apply to individuals for whom a modified adjusted gross income (or MAGI) is the Medicaid eligibility standard or to former foster care individuals who aged out of foster care while receiving Medicaid coverage. The Affordable Care Act mandates that effective January 1, 2014, that the eligibility standard for certain categories of individuals will be a modified adjusted gross income. Additionally, the Affordable Care Act prohibits the application of the requirements in this administrative regulation to individuals governed by the MAGI rules. Also, the Affordable Care Act created a new mandatory eligibility group comprised of individuals between the ages of nineteen (19) and twenty-six (26) who formerly were in foster care but aged out of foster care while receiving Medicaid coverage and bars the requirements in this administrative regulation from being applied to that group. As Medicaid coverage under the MAGI standards and for former foster care individuals is mandatory January 1, 2014 and eligibility determinations can begin October 1, 2013, this administrative regulation is necessary to be implemented on an emergency basis. Thus, the Department for Medicaid Services is implementing this administrative regulation on an emergency basis to exempt individuals under the MAGI rules and former foster care individuals from the requirements established in this administrative regulation.

(2) This action must be implemented on an emergency basis to comply with a federal mandate.

(3) This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler.

(4) The ordinary administrative regulation is identical to this emergency administrative regulation.

Steven L. Beshear
Governor

Audrey Tayse Haynes, Secretary
Cabinet for Health and Family Services

1 CABINET FOR HEALTH AND FAMILY SERVICES

2 Department for Medicaid Services

3 Division of Policy and Operations

4 (Emergency Amendment)

5 907 KAR 20:035E~~[907 KAR 1:655]~~. Spousal impoverishment and nursing facility re-
6 quirements for Medicaid.

7 RELATES TO: KRS 194A.505, 205.520, 205.619, 304.14-640, 304.14-642, 38
8 U.S.C. 5503

9 STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 42 C.F.R.
10 Part 435, 42 U.S.C. 1396a, 1396d, 1396r-5

11 NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family
12 Services has responsibility to administer the Medicaid Program. KRS 205.520(3) au-
13 thorizes the cabinet, by administrative regulation, to comply with a requirement that may
14 be imposed, or opportunity presented, by federal law to qualify for federal Medicaid
15 funds~~[for the provision of medical assistance to Kentucky's indigent citizenry]~~. This ad-
16 ministrative regulation establishes spousal impoverishment and nursing facility require-
17 ments for Medicaid eligibility determinations for individuals for whom resources are
18 considered for Medicaid eligibility persons.

19 Section 1. [Definitions. (1) “Assigned support right” means the assignment of the
20 support right of an institutionalized individual to the state or Medicaid Program.

1 ~~(2) "Community spouse" means the spouse of an institutionalized spouse, who re-~~
2 ~~mains at home in the community and is not living in a medical institution or nursing facil-~~
3 ~~ity or participating in a home and community based services (HCBS) waiver program.~~

4 ~~(3) "Community spouse maintenance standard" means the income standard to which~~
5 ~~a community spouse's otherwise available income is compared for purposes of deter-~~
6 ~~mining the amount of the allowance used in the posteligibility calculation.~~

7 ~~(4) "Continuous period of institutionalization" means thirty (30) or more consecutive~~
8 ~~days of institutional care in a medical institution or nursing home or both and may in-~~
9 ~~clude thirty (30) consecutive days of receipt of HCBS or a combination of both.~~

10 ~~(5) "Countable resources" means resources not subject to exclusion in the Medicaid~~
11 ~~Program.~~

12 ~~(6) "Department" means the Department for Medicaid Services or its designee.~~

13 ~~(7) "Dependent child" means the couple's child, including a child gained through~~
14 ~~adoption, who lives with the community spouse and is claimed as a dependent by either~~
15 ~~spouse under the Internal Revenue Service Code.~~

16 ~~(8) "Dependent parent" means a parent of either member of a couple who lives with~~
17 ~~the community spouse and is claimed as a dependent by either spouse under the Inter-~~
18 ~~nal Revenue Service Code.~~

19 ~~(9) "Dependent sibling" means a brother or sister of either member of a couple, in-~~
20 ~~cluding a half brother, half sister or sibling gained through adoption, who resides with~~
21 ~~the community spouse and is claimed as a dependent by either spouse under the Inter-~~
22 ~~nal Revenue Service Code.~~

23 ~~(10) "Excess shelter allowance" means an amount equal to the difference between~~

1 ~~the community spouse's verified shelter expenses and the minimum shelter allowance.~~

2 ~~(11) "Gross income" means nonexcluded income which would be used to determine~~
3 ~~eligibility prior to income disregards.~~

4 ~~(12) "Income" means money received from statutory benefits (Social Security, Veter-~~
5 ~~ans Administration pension, black lung benefits, railroad retirement benefits), pension~~
6 ~~plans, rental property, investments or wages for labor or services.~~

7 ~~(13) "Institutionalized individual" means an individual with respect to whom payment~~
8 ~~is based on a level of care provided in a nursing facility and who is:~~

9 ~~(a) An inpatient in:~~

10 ~~1. A nursing facility (NF);~~

11 ~~2. An intermediate care facility for individuals with mental retardation or a develop-~~
12 ~~mental disability (ICF/MR/DD); or~~

13 ~~3. A medical institution; or~~

14 ~~(b) Receiving home and community based services (HCBS).~~

15 ~~(14) "Institutionalized spouse" means an institutionalized individual who is in a medi-~~
16 ~~cal institution or nursing facility, or participates in an HCBS waiver program and who:~~

17 ~~(a) Has a spouse who is not an institutionalized individual; and~~

18 ~~(b) Is likely to remain institutionalized for at least thirty (30) consecutive days while~~
19 ~~the community spouse remains out of a medical institution or nursing facility or HCBS~~
20 ~~waiver program.~~

21 ~~(15) "Long-term care partnership insurance" is defined by KRS 304.14-640(4).~~

22 ~~(16) "Long-term care partnership insurance policy" means a policy meeting the re-~~
23 ~~quirements established in KRS 304.14-642(2).~~

1 ~~(17) "Medical institution or nursing facility" means a hospital, nursing facility, or in-~~
2 ~~termediate care facility for the mentally retarded and developmentally disabled.~~

3 ~~(18) "Minimum shelter allowance" means an amount that is thirty (30) percent of the~~
4 ~~standard maintenance amount.~~

5 ~~(19) "Minor" means the couple's minor child who:~~

6 ~~(a) Is under age twenty-one (21);~~

7 ~~(b) Lives with a community spouse; and~~

8 ~~(c) Is claimed as a dependent by either spouse under the Internal Revenue Service~~
9 ~~Code.~~

10 ~~(20) "Monthly income allowance" means an amount:~~

11 ~~(a) Deducted in the posteligibility calculation for maintenance needs of a community~~
12 ~~spouse or other family member; and~~

13 ~~(b) Equal to the difference between a spouse's and other family member's income~~
14 ~~and the appropriate maintenance needs standards.~~

15 ~~(21) "Other family member" means a relative of either member of a couple who is a:~~

16 ~~(a) Minor or dependent child;~~

17 ~~(b) Dependent parent; or~~

18 ~~(c) Dependent sibling.~~

19 ~~(22) "Other family member's maintenance standard" means an amount equal to one-~~
20 ~~third (1/3) of the difference between the income of the other family member and the~~
21 ~~standard maintenance amount.~~

22 ~~(23) "Otherwise available income" means income to which the community spouse~~
23 ~~has access and control, including gross income that would be used to determine eligibil-~~

1 ~~ity under Medicaid without benefit of disregards for federal, state and local taxes; child~~
2 ~~support payments; or other court ordered obligation.~~

3 ~~(24) "Resource assessment" means the assessment, at the beginning of the first~~
4 ~~continuous period of institutionalization of the institutionalized spouse upon request by~~
5 ~~either spouse, of the joint resources of a couple if a member of the couple enters a~~
6 ~~medical institution or nursing facility or becomes a participant in an HCBS waiver pro-~~
7 ~~gram.~~

8 ~~(25) "Resources" mean money and personal property or real property that an institu-~~
9 ~~tionalized individual or institutionalized individual's spouse:~~

10 ~~(a) Owns;~~

11 ~~(b) Has the right, authority or power to convert to cash; and~~

12 ~~(c) Is not legally restricted from using for support and maintenance.~~

13 ~~(26) "Significant financial duress" means a member of a couple has established to~~
14 ~~the satisfaction of a hearing officer that the community spouse needs income above the~~
15 ~~level permitted by the community spouse maintenance standard to provide for medical,~~
16 ~~remedial, or other support needs of the community spouse to permit the community~~
17 ~~spouse to remain in the community.~~

18 ~~(27) "Spousal protected resource amount" means resources deducted from a cou-~~
19 ~~ple's combined resources for the community spouse in an eligibility determination for~~
20 ~~the institutionalized spouse.~~

21 ~~(28) "Spousal share" means one-half (1/2) of the amount of a couple's combined~~
22 ~~countable resources, up to a maximum of \$60,000 to be increased for each calendar~~
23 ~~year in accordance with 42 U.S.C. 1396r-5(g).~~

1 ~~(29) "Spouse" means a person legally married to another under state law.~~

2 ~~(30) "Standard maintenance amount" means one-twelfth (1/12) of the federal poverty~~
3 ~~income guideline for a family unit of two (2) members, with revisions of the official in-~~
4 ~~come poverty guidelines applied for Medicaid provided during and after the second cal-~~
5 ~~endar quarter that begins after the date of publication of the revisions, multiplied by 150~~
6 ~~percent.~~

7 ~~(31) "State spousal resource standard" means the amount of a couple's combined~~
8 ~~countable resources determined necessary by the department for a community spouse~~
9 ~~to maintain himself in the community.~~

10 ~~(32) "Support right" means the right of an institutionalized spouse to receive support~~
11 ~~from a community spouse under state law.~~

12 ~~(33) "Undue hardship" means that Medicaid eligibility of the institutionalized spouse~~
13 ~~cannot be established on the basis of assigned support rights and the spouse is subject~~
14 ~~to discharge from the medical institution, nursing facility, or HCBS waiver program due~~
15 ~~to inability to pay.~~

16 Section 2.] Resource Assessment. (1) Pursuant to 42 U.S.C. 1396r-5(c)(1)(B), an
17 assessment of the joint resources of an institutionalized spouse and the community
18 spouse shall be made;

19 (a) Upon request of either spouse at the beginning of a continuous period of institu-
20 tionalization of the institutionalized spouse; and

21 (b) Upon receipt of relevant documentation of resources.

22 (2) Resources that have been protected from estate recovery[,], due to a long-term
23 care partnership insurance policy, shall be excluded from the eligibility determination by

1 the eligibility worker at the time of application.

2 (3) An~~The~~ assessment shall contain the total value of the joint resources and com-
3 putation of the spousal share.

4 (4) The department shall complete the assessment within forty-five (45) days follow-
5 ing submission of complete documentation or verification.

6 (5) Upon completion of a~~the~~ resource assessment, each spouse shall:

7 (a) Receive a copy of the assessment; and

8 (b) Be notified that the right of appeal of the assessment shall exist at the time the
9 institutionalized spouse applies for Medicaid.

10 Section 2~~3~~. Protection of Income and Resources of the Couple for Maintenance of
11 the Community Spouse. (1) The income provisions established in this subsection shall
12 apply for an individual beginning a continuous period of institutionalization on or after
13 September 30, 1989.

14 (a) Except as provided in paragraph (b) of this subsection, during a month in which
15 an institutionalized spouse is in the institution, income of the community spouse shall
16 not be deemed available to the institutionalized spouse.

17 (b) In determining the income of an institutionalized spouse or community spouse,
18 after the institutionalized spouse has been determined or redetermined to be eligible for
19 Medicaid, the provisions of 42 U.S.C. 1396r-5(b)(2) shall apply.

20 (2) The resource provisions established in this subsection shall apply for an individu-
21 al beginning a continuous period of institutionalization on or after September 30, 1989.

22 (a) Except as provided in subsection (4)(b) of this section, in calculating the re-
23 sources of an institutionalized spouse at the time of an initial eligibility determination for

1 a benefit under Medicaid, the resources held by either the institutionalized spouse,
2 community spouse, or both, shall be considered to be available to the institutionalized
3 spouse.

4 (b) The following protected amounts shall be deducted from a couple's combined
5 countable resources at the time of the determination of initial eligibility of the institution-
6 alized spouse:

7 1. The greater amount of:

8 a. The spousal share which shall not exceed a maximum of \$60,000 to be increased
9 for each calendar year in accordance with 42 U.S.C. 1396r-5(g); or

10 b. The state resource standard; and

11 2.a. If applicable, an additional amount transferred under a court support order; or

12 b. If applicable, an additional amount designated by a hearing officer.

13 (c) The institutionalized spouse shall not be ineligible by reason of resources deter-
14 mined under paragraphs (a) and (b) of this subsection to be available for the cost of
15 care in the following circumstances:

16 1. The institutionalized spouse has assigned to the department his right to support
17 from the community spouse;

18 2. The institutionalized spouse:

19 a. Lacks the ability to execute an assignment due to physical or mental impairment;
20 and

21 b. The state has the right to bring a support proceeding against a community spouse
22 without the assignment; or

23 3. The department determines that denial of eligibility would work an undue hardship.

1 (d) After eligibility for benefits is established for the individual:

2 1. During the continuous period in which an institutionalized spouse is in an institu-
3 tion and after the month in which an institutionalized spouse is determined to be eligible
4 for a Medicaid benefit, the resources of the community spouse shall not be deemed
5 available to the institutionalized spouse; and

6 2. Resources of the institutionalized spouse protected for the needs of the communi-
7 ty spouse shall be considered available to the institutionalized spouse if the resources
8 are not transferred to the community spouse within six (6) months of the initial eligibility
9 determination.

10 (e) The equity value of an automobile in excess of the limits established by 907 KAR
11 20:025[907 KAR 1:645] shall not be included as a countable resource.

12 (3) The provisions established in this subsection shall apply with regard to protecting
13 income for a[the] community spouse.

14 (a) After an institutionalized spouse is determined or redetermined to be eligible for
15 Medicaid, in determining the amount of the spouse's income that is to be applied
16 monthly to payment for the costs of care in the institution, there shall be deducted from
17 the spouse's monthly income the following amounts in the following order:

18 1. A personal needs allowance of forty (40) dollars plus a mandatory withholding
19 from income, including a mandatory payroll deduction that is a condition of employment
20 and federal, state, and local taxes that the government requires the payer to deduct be-
21 fore payment is made to the payee;

22 2. A community spouse monthly income allowance to the extent income of the insti-
23 tutionalized spouse is made available to, or for the benefit of, the community spouse;

1 3. A family allowance determined in accordance with the definition of other family
2 member's maintenance standard; and

3 4. An amount for incurred expenses for medical or remedial care for the institutional-
4 ized spouse.

5 (b)1. ~~[Establishment of the community spouse income allowance.~~

6 4.] The community spouse income allowance shall be the sum of the standard
7 maintenance amount and the excess shelter allowance, not to exceed the community
8 spouse maintenance standard.

9 2. The community spouse maintenance standard shall be set at \$1,500 per month, to
10 be increased for each calendar year in accordance with 42 U.S.C. 1396r-5(g).

11 (c) If a court has entered an order against an institutionalized spouse for monthly in-
12 come for the support of the community spouse, the community spouse income allow-
13 ance for the spouse shall not be less than the amount ordered.

14 (4) The provisions established in this subsection shall apply regarding~~[with regard to]~~
15 a transfer of resources from an institutionalized spouse.

16 (a)1. An institutionalized spouse may, without regard to the prohibition against dis-
17 posal of assets for less than fair market value, transfer to the community spouse, or to
18 another for the sole benefit of the community spouse, an amount equal to the spousal
19 protected resource amount to the extent the resources of the institutionalized spouse
20 are transferred to, or for the sole benefit of, the community spouse.

21 2. The transfer shall be made as soon as practicable after the initial determination of
22 eligibility, taking into account the time necessary to obtain a court order under para-
23 graph (c) of this subsection.

1 (b)1. ~~[Establishment of the spousal protected resource amount.~~

2 4.] The spousal protected resource amount shall be the greater of:

3 a. The spousal share which shall not exceed a maximum of \$60,000 to be increased
4 for each calendar year in accordance with 42 U.S.C. 1396r-5(g); or

5 b. The state spousal resource standard.

6 2. The state spousal resource standard shall be set at \$20,000.[;]

7 3. For an individual, the spousal protected resource amount may be a higher amount
8 established by a hearing officer[;] or a higher amount transferred under a court order as
9 specified in paragraph (c) of this subsection.

10 (c) If a court has entered an order against an institutionalized spouse for the support
11 of a community spouse, the prohibition against disposal of assets for less than fair mar-
12 ket value shall not apply to the amount of resources transferred pursuant to the order
13 for the support of the spouse.

14 (5) Except for a transfer of resources to the community spouse as specified in sub-
15 section (4) of this section, the transfer of resource policies established by 907 KAR
16 20:030~~[907 KAR 1:650]~~ shall apply.

17 (6)(a) The department shall send the notice specified in paragraph (b) of this subsec-
18 tion to both spouses upon a:

19 1. Determination of eligibility for Medicaid of an institutionalized spouse; or

20 2. Request by:

21 a. The institutionalized spouse;

22 b. The community spouse; or

23 c. A representative acting on behalf of either spouse.

1 (b) The notice shall state the:

2 1. ~~[The]~~ Amount of the community spouse monthly income allowance;

3 2. ~~[The]~~ Amount of a family allowance, if any;

4 3. ~~[The]~~ Method of computing the amount of the community spouse resources allow-
5 ance; and

6 4. ~~[The]~~ Spouse's right to a fair hearing in accordance with 907 KAR 20:065~~[907~~
7 ~~KAR 1:560]~~.

8 (7)(a) Both the institutionalized spouse and community spouse shall be entitled to a
9 fair hearing in accordance with 907 KAR 20:065~~[907 KAR 1:560]~~ if the spouse is dissat-
10 isfied with the action of the agency including determination of the following:

11 1. The community spouse monthly income allowance;

12 2. The amount of monthly income determined to be otherwise available to the com-
13 munity spouse;

14 3. The attribution of resources at the time of the initial eligibility determination; or

15 4. The determination of the community spouse resource allowance.

16 (b) If either the institutionalized spouse or community spouse establishes during the
17 hearing that the community spouse needs income above the level otherwise provided
18 by the monthly maintenance needs allowance, due to an exceptional circumstance re-
19 sulting in significant financial duress, an amount adequate to provide the necessary ad-
20 ditional income shall be substituted for the monthly maintenance needs allowance.

21 (c) If either spouse established during the hearing process that the community
22 spouse resource allowance, in relation to the amount of income generated by an allow-
23 ance, is inadequate to raise the community spouse's income to the monthly mainte-

1 nance needs allowance, there shall be substituted for the community spouse resource
2 allowance an amount adequate to provide the monthly maintenance needs allowance.

3 Section 3.~~[4.]~~ Specified Individuals in Nursing Facilities. For an individual who is
4 aged, blind, or has a disability and who is in a medical institution or nursing facility but
5 does not have a community spouse, the requirements established in this section with
6 respect to income limitations and treatment of income shall apply.

7 (1) In determining:

8 (a) Eligibility, the appropriate medically needy standard or special income level, dis-
9 regards, and exclusions from income shall be used; and~~[-In determining]~~

10 (b) Patient liability for the cost of institutional care, gross income shall be used as
11 provided in subsections (2) and (3) of this section.

12 (2)(a) Income protected for basic maintenance shall be forty (40) dollars monthly plus
13 mandatory withholdings.

14 (b) Mandatory withholdings shall:

15 1.~~[(a)]~~ Include minimum state and federal taxes; and

16 2.~~[(b)]~~ Not include court-ordered child support, alimony, or similar payment resulting
17 from an action by the recipient.

18 (3)(a) An amount excluded under a plan to achieve self-support [~~(PASS)~~], as an im-
19 pairment~~[income]~~ related work expense, [~~(IRWE)~~] or a blind work expense (BWE) shall
20 be considered an increased personal needs allowance for a Medicaid recipient except a
21 recipient for whom a quarterly spenddown process as established in 907 KAR
22 20:020~~[907 KAR 1:640]~~ is applicable.

23 (4) Income in excess of the amount protected for basic maintenance shall be applied

1 to the cost of care except as provided in this subsection:

2 (a) Available income in excess of the basic maintenance allowance shall be first con-
3 served as needed to provide for the needs of a minor child up to the appropriate family
4 size amount from the scale as established by 907 KAR 20:020, Section 1(1)~~[907 KAR~~
5 ~~1:640, Section 2(1)]~~.

6 (b) Remaining available income shall be applied to the incurred costs of medical and
7 remedial care that are not subject to payment by a third party (except that the incurred
8 costs may be reimbursed under another public program of the state or political subdivi-
9 sion of the state), including Medicare and health insurance premiums or medical care
10 recognized under state law but not covered under the state's Medicaid plan.

11 (5) The basic maintenance standard allowed an~~the~~ individual during the month of
12 entrance into or exit from the nursing facility shall take into account the home mainte-
13 nance costs.

14 (6) If an individual loses eligibility for a supplementary payment due to entrance into
15 a participating nursing facility~~;~~ and the supplementary payment is not discontinued on
16 a timely basis, the amount of an overpayment shall be considered as available income
17 to offset the cost of care to the Medicaid Program.

18 (7)(a) An SSI benefit payment, mandatory state supplement payment, or optional
19 state supplement~~[A supplemental security income (SSI) or state supplementation]~~ pay-
20 ment received by a specified institutionalized Medicaid eligible individual in accordance
21 with 42 U.S.C. 1382(e)(1)(G) shall be excluded from consideration as either income or
22 a resource.

23 (b) The payment shall not be used in the posteligibility process to increase the pa-

1 tient liability.

2 (8)(a) Ninety (90) dollars of Veterans Affairs~~[Veteran's Administration (VA)]~~ benefits
3 received by a veteran or the spouse of a veteran shall be excluded from consideration
4 as income.

5 (b) The ninety (90) dollars shall not be counted in the eligibility or the posteligibility
6 calculation.

7 ~~(9)(a)~~ Veterans Affairs~~[Administration]~~ payments for unmet medical expenses
8 and aid and attendance shall:

9 (a) Be excluded in a Medicaid eligibility determination for a veteran or the spouse of
10 a veteran residing in a nursing facility;~~[-]~~

11 ~~(b) [Veterans Administration payments for unmet medical expenses and aid and at-~~
12 ~~tendance shall]~~ Be excluded in the posteligibility determination for a veteran or the
13 spouse of a veteran residing in a nonstate-operated nursing facility; and~~[-]~~

14 (c) ~~[Veterans Administration payments for unmet medical expenses and aid and at-~~
15 ~~tendance shall]~~ Not be excluded in the posteligibility determination process for a veter-
16 an or the spouse of a veteran residing in a state-operated nursing facility.

17 (10) Income placed in a qualifying income trust established in accordance with 42
18 U.S.C. 1396p(d)(4) and 907 KAR 20:030, Section 3(5)~~[907 KAR 1:650, Section 4(5)]~~,
19 shall be counted in the posteligibility determination.

20 Section 4~~[5]~~ Special Needs Contributions for Institutionalized Individuals. (1) A vol-
21 untary payment made by a relative or other party on behalf of a nursing facility resident
22 or patient shall not be considered as available income if made to obtain a special privi-
23 lege, service, or item not covered by the Medicaid Program.

(2) A special service or item shall include television or telephone service, private room or bath, or a private duty nursing service.

Section 5. Applicability. (1)(a) The provisions and requirements established in this administrative regulation shall not apply to an individual:

1. Whose Medicaid eligibility is determined using the modified adjusted gross income standard; or

2. Between the ages of nineteen (19) and twenty-six (26) years who:

a. Formerly was in foster care; and

b. Aged out of foster care while receiving Medicaid coverage.

(b) Resources shall not be considered for eligibility purposes for individuals

1. Whose Medicaid eligibility is determined using the modified adjusted gross income standard; or

2. Between the ages of nineteen (19) and twenty-six (26) years who:

a. Formerly was in foster care; and

b. Aged out of foster care while receiving Medicaid coverage.

(2) An individual whose Medicaid eligibility is determined using a modified adjusted gross income as the eligibility standard shall be an individual who is:

(a) A child under the age of nineteen (19) years, excluding children in foster care;

(b) A caretaker relative with income up to 133 percent of the federal poverty level;

(c) A pregnant woman, with income up to 185 percent of the federal poverty level, including the postpartum period up to sixty (60) days after delivery;

(d) An adult under sixty-five (65) with income up to 133 percent of the federal poverty level who:

- 1 1. Does not have a dependent child under the age of nineteen (19) years; and
- 2 2. Is not otherwise eligible for Medicaid benefits; or
- 3 (e) A targeted low income child with income up to 150 percent of the federal poverty
- 4 level.

907 KAR 20:035E

REVIEWED:

Date

Lawrence Kissner, Commissioner
Department for Medicaid Services

APPROVED:

Date

Audrey Tayse Haynes, Secretary
Cabinet for Health and Family Services

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation Number: 907 KAR 20:035E

Cabinet for Health and Family Services

Department for Medicaid Services

Agency Contact: Marchetta Carmicle (502) 564-6204 or Stuart Owen (502) 564-4321

- (1) Provide a brief summary of:
 - (a) What this administrative regulation does: This administrative regulation establishes spousal impoverishment and nursing facility requirements for Medicaid eligibility determinations for individuals for whom resource requirements apply. Resource requirements do not apply to individuals for whom a modified adjusted gross income, or MAGI, is the Medicaid eligibility income standard.
 - (b) The necessity of this administrative regulation: This administrative regulation is necessary to spousal impoverishment and nursing facility requirements for Medicaid eligibility determinations for individuals for whom resource requirements apply.
 - (c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing spousal impoverishment and nursing facility requirements for Medicaid eligibility determinations for individuals for whom resource requirements apply.
 - (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the authorizing statutes by establishing spousal impoverishment and nursing facility requirements for Medicaid eligibility determinations for individuals for whom resource requirements apply.
- (2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
 - (a) How the amendment will change this existing administrative regulation: The amendment establishes that the resource requirements do not apply to individuals for whom a modified adjusted gross income (or MAGI) is the Medicaid eligibility standard or to former foster care individuals between the ages of nineteen (19) and twenty-six (26) who aged out of foster care while receiving Medicaid coverage. Individuals for whom a MAGI is the Medicaid income eligibility standard are children under nineteen (19) – except for children in foster care; caretaker relatives with income up to 133 percent of the federal poverty level; pregnant women [including through day sixty (60) of the postpartum period] with income up to 185 percent of the federal poverty level; adults under sixty-five (65) with no child under nineteen (19) who do not otherwise qualify for Medicaid and whose income is below 133 percent of the federal poverty level; and targeted low-income children with income up to 150 percent of the federal poverty level. The

amendment also deletes the definitions and includes language and formatting revisions to comply with KRS Chapter 13A standards.

- (b) The necessity of the amendment to this administrative regulation: The MAGI-related amendment and former foster care individual amendment is necessary to comply with an Affordable Care Act mandate. Deleting the definitions is necessary as the Department for Medicaid Services (DMS) is creating a definitions administrative regulation for Chapter 20 – the chapter which will house Medicaid eligibility administrative regulations. The language and formatting amendments are necessary to comply with KRS Chapter 13A standards.
 - (c) How the amendment conforms to the content of the authorizing statutes: The MAGI-related amendment and former foster care individual amendment conforms to the content of the authorizing statutes by complying with an Affordable Care Act mandate. The language and formatting amendments conform to the content of the authorizing statutes by complying with KRS Chapter 13A standards.
 - (d) How the amendment will assist in the effective administration of the statutes: The MAGI-related amendment and former foster care individual amendment will assist in the effective administration of the authorizing statutes by complying with an Affordable Care Act mandate. The language and formatting amendments conform to the content of the authorizing statutes by complying with KRS Chapter 13A standards.
- (3)** List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Individuals whose Medicaid income eligibility standard is a modified adjusted gross income will be affected by the amendment as they are exempted from the requirements in this administrative regulation. The Department for Medicaid Services (DMS) estimates that the affected group will encompass 678,000 individuals in state fiscal year (SFY) 2014. Additionally, the requirements do not apply to former foster care individuals who aged out foster care while receiving Medicaid benefits at the time. DMS estimates that this group will include 3,358 individuals.
- (4)** Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:
- (a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment. No actions are required.
 - (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). No cost is imposed.
 - (c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Individuals in the MAGI group and former foster care individual group will benefit by being exempt from the requirements of this administrative regulation.

- (5) Provide an estimate of how much it will cost to implement this administrative regulation:
- (a) Initially: DMS anticipates no cost as a result of exempting the individuals for whom a modified adjusted gross income is the Medicaid eligibility standard or former foster care individuals from the requirements established in this administrative regulation.
 - (b) On a continuing basis: The response in paragraph (a) also applies here.
- (6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX of the Social Security Act and matching funds from general fund appropriations.
- (7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Neither an increase in fees nor funding is necessary to implement the amendment.
- (8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendment neither establishes nor increases any fees.
- (9) Tiering: Is tiering applied? (Explain why tiering was or was not used) Tiering is applied in the sense that the requirements do not apply to individuals whose Medicaid eligibility is determined using a modified adjusted gross income or to former foster care individuals as the Affordable Care Act prohibits applying the requirements to these individuals.

FEDERAL MANDATE ANALYSIS COMPARISON

Regulation Number: 907 KAR 20:035E

Agency Contact: Marchetta Carmicle (502) 564-6204 or Stuart Owen (502) 564-4321

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396a(e)(14)(C) and 42 U.S.C. 1396a(a)(10)(A)(i)(IX).
2. State compliance standards. KRS 205.520(3) authorizes the cabinet to comply with a requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry.
3. Minimum or uniform standards contained in the federal mandate. The federal law prohibits the application of a resource test to the MAGI population or to the former foster care population.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The amendment neither imposes stricter nor additional nor different responsibilities nor requirements than those required by the federal mandate.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. This amendment does not impose stricter than federal requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation Number: 907 KAR 20:035E

Agency Contact: Marchetta Carmicle (502) 564-6204 or Stuart Owen (502) 564-4321

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services (DMS) will be impacted by the amendment.
2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation authorizes the action taken by this administrative regulation.
3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.
 - (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? DMS does not expect the amendment to this administrative regulation to generate revenue for state or local government.
 - (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? DMS does not expect the amendment to this administrative regulation to generate revenue for state or local government.
 - (c) How much will it cost to administer this program for the first year? DMS anticipates no cost in the first year as a result of exempting the individuals for whom a modified adjusted gross income is the Medicaid eligibility standard from the requirements established in this administrative regulation nor from exempting former foster care individuals from the requirements.
 - (d) How much will it cost to administer this program for subsequent years? DMS anticipates no cost in subsequent years as a result of exempting the individuals for whom a modified adjusted gross income is the Medicaid eligibility standard from the requirements established in this administrative regulation nor from exempting former foster care individuals from the requirements.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): .

Expenditures (+/-):